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IN THE
COURT OF APPEALS OF INDIANA

CHAD HESTER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 31A04-0709-CR-511
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HARRISON SUPERIOR COURT
The Honorable Roger D. Davis, Judge
Cause No. 31D01-0606-FB-400

May 15, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Sr. Judge

Chad Hester appeals his sentence for robbery as a class B felony.[1] Hester raises two issues, which we restate as:

I. Whether the trial court abused its discretion in sentencing Hester; and

II. Whether the sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

The relevant facts follow. On May 20, 2006, twenty-seven-year-old Hester entered the Baymont Inn in Harrison County and took money from the clerk by placing her in fear with a knife. The State charged Hester with robbery as a class B felony and theft as a class D felony.[2]

Hester agreed to plead guilty to robbery as a class B felony, and under the proposed plea agreement, Hester would have received a sentence of twenty years with ten years suspended to probation. The trial court rejected the plea agreement due to Hester's extensive criminal history. Hester then pleaded guilty to robbery as a class B felony without a sentencing recommendation. The trial court sentenced Hester to nineteen years in the Indiana Department of Correction with five years suspended to probation. The trial court noted that the sentence would be consecutive to any sentences imposed by two probation revocation cases in Clark County. The trial court identified Hester's criminal history as an aggravating factor but identified no mitigating factors.

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[1] Ind. Code § 35-42-5-1 (2004).

[2] Ind. Code § 35-43-4-2 (2004).

I.

The first issue is whether the trial court abused its discretion in sentencing Hester. We note that Hester's offense was committed after the April 25, 2005, revisions of the sentencing scheme. In clarifying these revisions, the Indiana Supreme Court has held that "the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence." Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). We review the sentence for an abuse of discretion. Id. An abuse of discretion occurs if "the decision is clearly against the logic and effect of the facts and circumstances." Id.

A trial court abuses its discretion if it: (1) fails "to enter a sentencing statement at all;" (2) enters "a sentencing statement that explains reasons for imposing a sentence--including a finding of aggravating and mitigating factors if any - but the record does not support the reasons;" (3) enters a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration;" or (4) considers reasons that "are improper as a matter of law." Id. at 490-491. If the trial court has abused its discretion, we will remand for resentencing "if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record." Id. at 491. However, under the new statutory scheme, the relative weight or value assignable to reasons properly found, or those which should have been found, is not subject to review for abuse of discretion. Id.

Hester argues that the trial court abused its discretion by failing to identify his guilty plea as a mitigating circumstance. The Indiana Supreme Court has "held that a defendant who pleads guilty deserves 'some' mitigating weight be given to the plea in return." Anglemyer v. State, 875 N.E.2d 218, 220 (Ind. 2007) ("Anglemyer Rehearing") (quoting McElroy v. State, 865 N.E.2d 584, 591 (Ind. 2007)). However, "an allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is not only supported by the record but also that the mitigating evidence is significant." Id. at 220-221. The significance of a guilty plea as a mitigating factor varies from case to case. Id. at 221. "For example, a guilty plea may not be significantly mitigating when it does not demonstrate the defendant's acceptance of responsibility, . . . or when the defendant receives a substantial benefit in return for the plea." Id. (citing Sensback v. State, 720 N.E.2d 1160, 1165 (Ind. 1999)). A guilty plea does not demonstrate the defendant's acceptance of responsibility where the "record shows that the plea agreement was 'more likely the result of pragmatism than acceptance of responsibility and remorse.'" Id. (quoting Mull v. State, 770 N.E.2d 308, 314 (Ind. 2002)).

Here, Hester did not receive a substantial benefit in return for his guilty plea. However, we conclude that his guilty plea was more likely the result of pragmatism than acceptance of responsibility and remorse. The record indicates that the robbery of the Baymont Inn was captured on surveillance videotape. The description of the Baymont Inn robber matched a videotaped identification of another robber of a bank in Sellersburg, Indiana, a few days later. Hester's fingerprints were recovered from the bank robbery,

and the Baymont Inn clerk identified Hester in a photo array. Moreover, Hester expressed no remorse for his actions.

Given the overwhelming evidence against Hester and his lack of remorse, we conclude that the trial court did not abuse its discretion by failing to identify Hester's guilty plea as a mitigating circumstance. See, e.g., Anglemyer Rehearing, 875 N.E.2d at 221 (holding that the defendant did not demonstrate that his guilty plea was a significant mitigating circumstance where the evidence against him was overwhelming and he attempted to minimize his culpability by relying upon his lack of employment, mental impairment, and history of emotional and behavioral problems).

Even if the trial court had identified Hester's guilty plea as a mitigating circumstance, we cannot say that the trial court would have imposed a different sentence. We will remand for resentencing "if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record." Anglemyer, 868 N.E.2d at 491. The trial court specifically rejected a sentence of twenty years with ten years suspended in the proposed plea agreement because of Hester's extensive criminal history. The trial court then imposed a sentence of nineteen years with five years suspended. In doing so, the trial court noted: "I think you deserve more than the ten year executed sentence . . . given your criminal history, on the other hand I don't think you deserve to have the whole twenty for that reason and also because you're probably not the worst person that ever [came] along." Transcript at 33. The trial court also expressed a desire to have Hester supervised after his release from prison to "increase the chances that [Hester] would live a law abiding

life instead of a life of crime and drugs . . . ." Id. at 32-33. Given the trial court's rejection of the proposed plea agreement and the trial court's reasoning, we conclude that, even if the trial court had identified Hester's guilty plea as a mitigator, the trial court would have imposed the same sentence. See, e.g., Robertson v. State, 871 N.E.2d 280, 287 (Ind. 2007) (holding that the trial court would have imposed the same sentence based solely on the permissible aggravators).

II.

The next issue is whether Hester's sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Our review of the nature of the offense reveals that Hester robbed a clerk at the Baymont Inn while brandishing a knife. Our review of the character of the offender reveals that twenty-seven-year-old Hester has an extensive criminal history. In 1998, Hester was charged with burglary as a class C felony and pleaded guilty to theft as a class D felony. He received a sentence of one and one-half years with 108 days executed and probation. In 1998, Hester was also charged with escape as a class C felony and resisting law enforcement as a class A misdemeanor. He pleaded guilty to resisting law enforcement and received a one-year sentence suspended to probation.

In 1999, Hester was charged with receiving stolen property as a class D felony, criminal conversion as a class A misdemeanor, and possession of marijuana as a class A misdemeanor. He pleaded guilty to criminal conversion and received a one-year sentence. In 2000, Hester was charged with auto theft as a class D felony, theft as a class D felony, obstruction of justice as a class D felony, and criminal mischief as a class A misdemeanor. He pleaded guilty to auto theft, obstruction of justice, and criminal mischief and received a sentence of 18 months in the Indiana Department of Correction and 180 days probation. In 2000, he was also charged with receiving a stolen automobile and false informing as a class B misdemeanor. He pleaded guilty to false informing and received a 180-day sentence.

In 2001, he was charged with auto theft as a class D felony and pleaded guilty. He received a sentence of one and one-half years in jail and one year and 170 days probation. In 2003, he was charged with attempted criminal conversion as a class A misdemeanor and public intoxication as a class B misdemeanor. He pleaded guilty to attempted criminal conversion and received a sentence of one year suspended to probation. In 2003, he was also charged in Kentucky with first-degree possession of cocaine and possession of drug paraphernalia. He pleaded guilty to third degree possession of a controlled substance.

In 2004, Hester was charged with receiving stolen property as a class D felony and pleaded guilty. He received a three-year sentence suspended to probation. In 2004, he was also charged with receiving stolen property as a class D felony, criminal recklessness as a class A misdemeanor, operating a vehicle while intoxicated as a class A

misdemeanor, operating a vehicle while intoxicated as a class C misdemeanor, and operating a vehicle with a BAC of more than 0.08 but less than 0.15. He pleaded guilty to receiving stolen property and operating a vehicle while intoxicated and received a four-year sentence suspended to probation.

While on probation for those offenses, Hester went on a crime spree in 2006. Hester was charged with residential entry as a class D felony and theft as a class D felony for acts committed on April 11, 2006. On May 20, 2006, Hester committed the instant offenses. On May 25, 2006, he committed robbery while armed with a deadly weapon as a class B felony and robbery as a class C felony and was charged as an habitual offender. On June 8, 2006, Hester committed two counts of robbery as class B felonies and two counts of theft as class D felonies. The residential entry charges were dismissed as part of a plea agreement, and Hester pleaded guilty to robbery as a class C felony and two counts of robbery as class B felonies on the remaining charges.

Although Hester pleaded guilty to the instant charges, we note that he also pleaded guilty to almost all of his other numerous offenses. Despite leniency shown to him previously, Hester has failed to respond to numerous opportunities to change his behavior. Rather, the severity of his offenses has escalated. Given his extensive criminal history, the escalation of the severity of his offenses, and his failure to respond to prior leniency, we cannot say that the sentence imposed by the trial court is inappropriate in light of the nature of the offense and the character of the offender. See, e.g., Reyes v. State, 848 N.E.2d 1081, 1083 (Ind. 2006) (holding that the nature of the offense and character of the defendant did not justify revising his sentence).

For the foregoing reasons, we affirm Hester's sentence for robbery as a class B felony.

Affirmed.

NAJAM, J. and DARDEN, J. concur